

## REMARKS

In the second Office Action, claims 1-35 were presented for examination. All of these claims were rejected, which rejections are respectfully traversed for the reasons set forth below.

### Independent Claim 1

Independent claim 1 was rejected under 35 USC 102 as being anticipated by Tomarin. In doing so, the Examiner stated:

*Tomarin teaches a multilayered sports playing field (figures 1-6). The top layer simulates natural playing surface (abstract). Said padding layer is woven material that would be inherently permeable to liquid and air (column 3 line 15-21). **There are rubber-like (elastic) beads (29) that are layered on the bottom surface of the woven backing layer that tend to align in rows spaced apart from one another (creating interstitial spaces) wherein adjacent beads join together (figure 5, column 3 line 57-68). (emphasis added)***

This rejection is respectfully traversed.

Independent claim 1 recites:

1. A multi-layered sports playing field for use over a **base layer** [9], said playing field including a **top layer** [3] made of substantially artificial material simulating a natural playing surface such as grass and at least one **padding layer** [7] positionable thereunder between said top layer and said base layer, **said padding layer [7] being porous and breathable to allow liquids and air to freely pass therethrough**, said padding layer including a **plurality of discrete beads** of substantially elastic, resilient material **wherein portions of adjacent beads abut one another and other portions of said adjacent beads are spaced from each other to create interstitial spaces therebetween** and wherein substantially all of said adjacent beads are integrally joined together at the abutting portions. (emphasis added)

As best understood, the Examiner equates Tomarin's top carpet layer 20 to Applicant's top layer 9, Tomarin's base layer 21 to Applicant's base layer 9, **and Tomarin's woven, backing sheet 23 to Applicants' padding layer 7**. Tomarin's backing sheet 23 in this regard is disclosed by him in lines 58-62 of his column 3 as having a bottom surface wherein:

**the bottom surface of the woven backing sheet [23] is preferably covered with the thin coating of monolithic, rubber-like material which provides a rubber, protective undersurface to rest upon the ground. (emphasis added)**

To the extent the upper, woven portion of Tomarin's padding (carpet) layer may be "inherently permeable to liquid and air (column 3 line 15-21)" as stated by the Examiner, the "rubber-like" coating on its bottom surface clearly is not. More importantly, it is precisely this non-porous, non-breathable "rubber-like" coating that the Examiner relies

upon to equate to Applicant's porous, breathable, beaded padding layer 7 described by the Applicant in claim 1 more fully as:

**said padding layer [7] being porous and breathable to allow liquids and air to freely pass therethrough, said padding layer including a plurality of discrete beads of substantially elastic, resilient material wherein portions of adjacent beads abut one another and other portions of said adjacent beads are spaced from each other to create interstitial spaces therebetween and wherein substantially all of said adjacent beads are integrally joined together at the abutting portions. (emphasis added)**

It is further not understood how Tomarin's evenly spaced, wavy channels 29 in his Figure 5 which are separated by flat portions 28 in his Figure 3 can be read on Applicant's "discrete beads" in which "portions of adjacent beads abut one another and other portions of said adjacent beads are spaced from each other." Either Tomarin's consistent, repeating pattern of wavy channels 29 abut one another or they are spaced from each other, they cannot be both. Even the Examiner's rejection quotes Tomarin as describing his channels 29 as tending to "align in rows spaced apart from one another."

Withdrawal of the rejection of claim 1 based on Tomarin and its allowance are respectfully requested.

Independent Claim 1 And  
Its Dependent Claims 2-9 And 26-33

Independent claim 1 and its dependent claims 2 and 3 were rejected under 35 USC 103 as being unpatentable over (a) Spinney (US 3,661,687) in view of (b) Bainbridge (6,357,054) with the Examiner stating as to Spinney:

*Spinney teaches a multilayered artificial turf having a top layer simulating real grass (figure 2). The sports surface uses a foam backing (14), as required in claim 2, comprising closed celled [foam], as in claim 3, disposed between grass like fibers and a base material (column 2 line 45-60). **Spinney is silent as to the playing field having an artificial turf top or being composed of beads.** (emphasis added)*

The Examiner then goes on to rely on Bainbridge, which is co-owned by the assignee of the current application and which deals primarily with beaded padding to be worn by athletes such as elbow, knee, and thigh pads. In relying on Bainbridge, the Examiner states:

*Bainbridge then teaches that **in athletic fields today**, the standard padding used is one or more sheets or layers of foam ... Bainbridge clearly contemplates application of the disclosed padding material in athletic **fields** and is discussing it as analogous art.* (emphasis added)

In reviewing Bainbridge and the portion at lines 5-20 of his column 2 relied upon by the Examiner, it is respectfully noted that this portion is in the "Background Of The Invention" section. The term used by Bainbridge is "field", not fields. Further, the "field" term as used in Bainbridge is clearly in the context of describing the "Field Of The Invention", not a physical field or fields on which sports are played. This is evident from the full text of Bainbridge and in particular the recitation at lines 2-14 of his column 2, to wit:

***In the athletic field [industry] today**, the standard padding used [on the athlete] is one or more sheets or layers of foam. Foam in this regard has the distinct advantages of being lightweight and relatively inexpensive. For the most part, there are two types of such foam padding. The first is closed cell which has the advantage of not absorbing moisture or other fluids. **However, layers of closed-cell foam tend to be stiff and do not conform well to the body, particularly when the athlete is active.** They also do not breathe to dissipate **body heat** and generally cannot be sewn into or washable with **the athlete's uniform.** (emphasis added)*

It is respectfully submitted that the specific recitation of Bainbridge relied upon by the Examiner was in the context of a background discussion, not in the context of discussing a physical field or fields on which sports are played. Consequently, it is respectfully

submitted that the reliance of the Examiner on this recitation of Bainbridge is misplaced and that the rejection of claims 1-3 and 4-9 based on it should be withdrawn.

The above notwithstanding and as noted by the Examiner, Spinney is completely silent as to his playing field being composed of beads. Further, Spinney neither teaches nor suggests the desired result of having a padding layer of beads wherein the layer is porous and breathable. Spinney appears to have nothing more than conventional slabs of foam.

In attempting to combine Spinney and Bainbridge, Applicants respectfully submit that the Examiner is clearly using Applicants' own disclosure and teachings to reject their claims. There is no teaching or suggestion in these patents to so combine them to make the multi-layered sports playing field as set forth in original independent claim 1. In fact, Spinney clearly teaches away from beads and describes both of his layers 12 and 14 as being separate "sheets" (line 41 of his column 2 and lines 27-28 of his column 3) that are "laid down" on one another wherein:

It is **critical and a key point** of this [Spinney's] invention that the layer [sheet] 12 and the layer [sheet] 14 are not bonded together, and that the layer [sheet] 12 "floats" or "rides" on the ... layer [sheet] 14 (see lines 54-57 of his column 2). (emphasis added)

Additionally, Applicants find no teaching, suggestion, or even concern of Spinney to create a sports field with a padding layer that is "porous and breathable to allow liquids and air to freely pass therethrough" as recited in Applicants' claim 1. Spinney's overlying sheets 12 and 14 in fact have the opposite effect.

Reconsideration and allowance of independent claim 1 are respectfully requested. Reconsideration and allowance of dependent claims 2-9 and 26-33 are also respectfully requested as they recite further details neither taught nor suggested by the art of record.

#### Dependent Claims 10-14, 16-19, And 34-35

These dependent claims were rejected as being unpatentable over Spinney in view of Bainbridge and further in view of Dury with the Examiner stating in part that:

*Spinney in view of Bainbridge teach all the limitations of claim 1 as above, but are silent on the presence of feet or their properties.*

*Dury teaches a playing surface with resilient carpet and a 2-layer cushion of bonded (beads) particulate rubber and foamed polyethylene enveloped in permeable fabric (column 1 line 50-65). The base layer consists of a flat layer and a plurality of drains (feet) that protrude into the ground (figure 1). The base layer comprises any suitable permeable material (column 3 line 1-2), instead of rubber particles (column 2 line 34-45).*

*It would have been obvious to a person of ordinary skill in the art at time of the invention to use the feet of Dury because they aid in providing drainage channels and use the beads of Bainbridge since they are a suitable water permeable material. (emphasis added)*

As respectfully pointed out in reference to independent claim 1, the combination of Spinney in view of co-owned Bainbridge does not teach nor make obvious all of the limitations of claim 1 and the proposed combination of the two is clearly using Applicants' own disclosure to reject independent claim 1. The additional citation of Dury taken alone or together with Spinney and Bainbridge does nothing to cure this deficiency. Applicants respectfully submit that modifying Dury in view of Bainbridge in regard to claims 10-14, 16-19, and 34-35 as proposed by the Examiner and then adding these modifications to Spinney in view of Bainbridge as applied to claim 1 are also clearly using Applicants' own disclosure to reject their claims.

Further, specifically as to the set of dependent claims 10-14 and 16-19, the primary dependent claim 10 recites:

10. The playing field of claim 1 wherein said padding layer has a main body of said beads, said main body having upper and lower, substantially horizontal surfaces spaced from each other, said padding layer further including a plurality of feet members extending substantially vertically downwardly from the lower surface of said main body, **said feet members being laterally spaced from one another and supporting said lower surface of said main body in a position spaced from said base layer to create a laterally extending water channel therebetween** wherein water passing through the interstitial spaces between the beads of said main body flows into said water channel between said main body and said base layer.

Applicants see no such "supporting" by Dury's "feet" members 3 in his Figure 1 of the lower surface of his main padding body 5 (or 9 and 5) in a "position spaced from" his base layer 1 to "create a laterally extending water channel therebetween." The disclosure of Dury in his Figure 1 is to have the bottom surface of his main pad 5 essentially flush with the top surface of his base layer 1 with an envelope or film layer 4 pinched or pressed flat therebetween. The supposed "feet" members 3 of Dury are made by digging holes into

the dirt layer 1, filling the holes with material, and then leveling the material (see lines 1-2 of his column 3). These "feet" members 3 and the dirt layer 1 are then covered by the film 4. There is no spacing of the pad 5 by the "feet" members 3, nor is there any spacing of the pad 5 from the dirt layer 1 to create a laterally extending water channel. Additionally, to the extent the "pad" of Dury is his layer 9, it is spaced from his base layer 1 by the sand layer 5, not by his "feet" members 3.

Reconsideration and allowance of dependent claim 10 and its further dependent claims 11-14, and 16-19, and dependent 34-35 are respectfully requested.

#### Dependent Claim 15

Claim 15 depends from the primary dependent claim 10 and the arguments submitted above as to dependent claim 10 and its independent claim 1 are incorporated by reference. Applicants do not believe the addition of Silentwalk to Spinney in view of Bainbridge in view of Dury overcomes the deficiencies previously noted.

Reconsideration and allowance of dependent claim 15 are respectfully requested.

#### Dependent Claims 20-25

These dependent claims were rejected based on the combination of Spinney and Bainbridge as applied to claim 1 and further in view of Dury and further in view of Mellor with claims 22 and 23 additionally rejected based on the combination of Spinney and Bainbridge as to claim 1 and further in view of Layman.

As respectfully pointed out in reference to independent claim 1, the combination of Spinney in view of co-owned Bainbridge does not teach nor make obvious all of the limitations of claim 1 and the proposed combination of the two is clearly using Applicants' own disclosure to reject independent claim 1. The additional citations taken alone or together do nothing to cure this deficiency. Applicants respectfully submit that further modifying Spinney in view of Bainbridge in view of Dury in view of Mellor as to claims 20-25 and further modifying Spinney in view of Bainbridge in view of Layman as to claims 22-23 as proposed by the Examiner are also clearly using Applicants' own disclosure to reject their claims.

Reconsideration and allowance of claims 20-25 are respectfully requested.

## SUMMARY

It is respectfully submitted that all of the claims now present in the case (claims 1-35) are in condition for allowance and such action is respectfully requested. If, in the opinion of the Examiner, prosecution of this application could be expedited by a telephone interview, the Examiner is respectfully requested to contact the attorney for the applicants at the telephone number listed below.

A petition under Rule 1.136(a) accompanies this amendment.

Respectfully submitted,

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